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ABSTRACT

This paper is the first in a three-part series on the fiscal provisions of the Individuals with Disabilities Education Act (IDEA). It provides a brief overview, history, and related background information on the major federal special education funding programs, including basic state grants under Part B of the IDEA (which require participating states to furnish all children with disabilities a free appropriate public education in the least restrictive setting) and state grants under Part H to support early intervention for eligible infants, toddlers, and their families. An analysis of the historical background of the programs provides a record of Congressional intent concerning the numerous fiscal provisions of the Act and the purposes originally set forth in the law. The paper concludes that the provisions of the Act, originally enacted in 1975 as Public Law 94-142, have remained remarkably resilient and are essentially intact as authorized. Additional provisions have been added for infants and toddlers, disability categories have been expanded, and minor revisions have been made to further refine and update the law. (Contains 20 references.) (JDD)

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Fiscal Provisions of the Individuals with Disabilities Education Act:

Historical Overview

Deborah A. Verstegen

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Policy Paper Number 2

Center for Special Education Finance

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Deborah A. Verstegen

Center for Special Education Finance
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The Center for Special Education Finance (CSEF) was established in October 1992 to address a comprehensive set of fiscal issues related to the delivery and support of special education services to children throughout the U.S. The Center's mission is to provide information needed by policymakers to make informed decisions regarding the provision of services to children with disabilities, and to provide opportunities for information sharing regarding critical fiscal policy issues.

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I. Introduction

The Individuals with Disabilities Education Act (IDEA), formerly known as the "Education of the Handicapped Act," is the primary source of federal aid to state and local school systems for instructional and support services for infants, toddlers, children, and youth with disabilities, from birth through age 21.

To provide for the education of children with disabilities, the IDEA authorizes three state formula grant programs and several discretionary grant programs. The fiscal centerpiece of the Act is a state grant-in-aid program, permanently authorized under Part B, which requires participating states to furnish all children with disabilities a free appropriate public education in the least restrictive setting. Included under this authority is grant-in-aid funding to support elementary and secondary education services for children ages 5 through 21 and preschool grants for children with disabilities, ages 3 through 5. The basic state grant and preschool state grant are permanently authorized in Part B of the Act. Provisions of the Act have remained virtually intact since enactment in 1975. However, new programs aimed at early intervention for infants and toddlers with disabilities have been created. Since 1986, the IDEA has included Part H, a formula grant program to assist the states in developing a coordinated, comprehensive statewide network of early intervention services for disabled infants and their families. This program is authorized through fiscal year (FY) 1994.

In addition to these three formula grants to states, the legislation authorizes an array of discretionary grant programs aimed at stimulating improvements in educational services for children with disabilities in Parts C through G. Included are grant programs designed to promote the recruitment and training of special education personnel, the conduct of research and demonstration projects, the development and dissemination of instructional

materials and information to teachers and parents, and some direct services for children. The discretionary grant programs are authorized through FY 1994.

This paper is the first in a three-part series on the fiscal provisions of the Individuals with Disabilities Education Act, developed by the Center for Special Education Finance (CSEF). It provides a brief overview, history, and related background information on the major federal special education funding programs, including basic state grants under the IDEA, Part B, and state grants under Part H to support early intervention for eligible infants, toddlers, and their families.[1] Parts of this paper draw upon and update information presented in the *Summary of Existing Legislation Affecting People with Disabilities*, published in June 1992 by the U.S. Department of Education, Office of Special Education and Rehabilitative Services.

The other two papers in this CSEF series include

- ***Fiscal Provisions of the Individuals with Disabilities Education Act: Policy Issues and Alternatives*** (by Thomas Parrish, CSEF, and Deborah Verstegen, University of Virginia). This paper discusses issues related to financing the IDEA including the following: demographic and fiscal trends contributing to pressures on the system of special education, the current federal role in special education financing, the link between federal and state fiscal reform, the use of Part B funds to influence state policy, and the relationship between the IDEA and Chapter 1 Handicapped funding. The paper also presents possible changes in federal policy for Part B funding, such as funding based on total school-age population and funding including a poverty adjustment, in addition to appropriation and authorization histories and analyses.

- ***Fiscal Provisions of the Individual with Disabilities Education Act: An Analysis of Identification Rates and Incidence Across the States*** (by Jay Chambers and Chris Martin, CSEF). This paper presents the results of a study designed to estimate the extent to which variations in identification rates of students with disabilities are affected by differences in state and local policies rather than by variations in the

[1]For background and issues on discretionary programs, see Schenet, 1989.

actual incidence rates of students with special needs. In addition to contributing to our understanding of the provisions of special education services, this research is intended to inform the federal debate about funding under the IDEA.

II. Major Programs Affecting Persons with Disabilities Under the IDEA, Part B, State Grant Program

The fiscal centerpiece of the Individuals with Disabilities Education Act is a state grant-in-aid program, permanently authorized under Part B, which requires participating states to furnish all children with disabilities a *free appropriate public education* (FAPE) in the *least restrictive setting*. Included under Part B are Basic State Grants and Preschool State Grants, which are the focus of this overview.

Basic State Grants

Part B of the IDEA authorizes formula grants to the states to cover part of the cost of providing special education and related services to children and youth with disabilities. The purpose of this formula grant program is to assist states in furnishing a free appropriate public education to all eligible children with disabilities. The education and related services supported under this program must conform to a federally-approved state plan.

As specified in the Act, a free appropriate public education includes

- *special education*, defined as "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions"

- *related services*, defined as "transportation, and such developmental, corrective and other supportive services . . . as may be required to assist a child with a disability to benefit from special education . . .," including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling, medical services (for diagnostic and evaluation purposes), and early identification and assessment of disabling conditions in children. Special education and related services are to be provided at no cost to parents or guardians, and in conformity with an "individualized education program" (IEP).

Allocation of Funds

Part B funds are allocated among the states on the basis of a statutory formula which takes into account the relative number of children with disabilities, ages 3 through 21, residing within a state, who are being furnished a free appropriate public education in the least restrictive setting. The Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population ages 3 through 17 (in states that serve all children with disabilities ages 3 through 5). However, a state must provide special education programs and services to all eligible children with disabilities.

The formula provides that states are "entitled" to receive up to 40 percent of the national average per pupil expenditure for each child with a disability served in order to help pay for the excess costs associated with his or her education. If sums appropriated are insufficient to pay the full entitlement, they are ratably reduced.[2] The total number of children counted for allocation purposes (the state's "child count") is based on a count of students identified as having one or more physical or mental disabilities, including mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.[3] The

[2]34 CFR, Section 300.703.

[3]34 CFR Section 300.7. The Education of Handicapped Amendments of 1990 (P. L. 101-476) expanded the definition of "children with disabilities" in section 602(a) to include children with autism and traumatic brain injury (TBI).

special education child count is taken on December 1 of each year for the following fiscal year.

State education agencies (SEAs) are required to pass through to local education agencies (LEAs) and intermediate educational units (IEUs) at least 75 percent of their annual allotments of Part B funds.[4] The dollar amount is based on the ratio of SEA to LEA (or IEU) children and youth receiving special education and related services.

Up to five percent of the state allotment, or $450,000, may be used for administration of the program; 20 percent may be reserved by the SEA for such activities as support services, direct services, monitoring, and compliance reviews.[5]

Part B is permanently authorized. The FY 1993 appropriation estimate is $2.053 billion. The FY 1994 request is $2.150 billion, an increase of $97 million, or 4.7 percent over the FY 1993 appropriation. The FY 1995 request is $2.270 billion, an increase of $120.5 million or 5.6 percent over the FY 1994 request.[6]

■ Requirements for Funding

In order to qualify for funding under Part B, a state must demonstrate to the Secretary of Education that it has

1. a policy that assures all children with disabilities the right to a free and appropriate public education

2. a plan, policies, and procedures for providing special education and related services that conform to the specifications of the Act

3. established priorities for providing services which give top priority to meeting the needs of unserved children with disabilities, and second

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[4]No funds shall be distributed to any local education agency or intermediate educational unit if it is entitled to less than $7,500, or if such LEA or IEU has not submitted an application which meets the requirements of the Act. If an LEA or IEU receives less than $7,500, a state may provide services directly or require several localities to submit a consolidated application. (Section 611(c)(4)(A))

[5]34 CFR Section 300.370-372.

[6]See U.S. Department of Education, *The Fiscal Year 1995 Budget*, Appendices, p. 7.

priority to improving services to underserved children with the most severe disabilities

4. a policy that requires local education agencies to maintain an individualized education program for each child with a disability

5. established safeguards and procedures for integrating children with disabilities into regular classrooms to the maximum extent appropriate, and procedures for non-discriminatory testing and evaluation that is free from racial and cultural bias

6. assigned to the state education agency responsibility for carrying out the provisions of Part B, including general supervision of special education programs administered by other state or local agencies

7. consulted with persons concerned with the education of children with disabilities and held public hearings to obtain input prior to adopting policies, programs, and procedures

Part B also stipulates that an individualized education program (IEP) must be developed for each child or youth with a disability. An IEP for each child and youth must include (a) a statement of the child's current educational performance levels; (b) annual goals and short-term instructional objectives; (c) a description of the specific special education and related services to be provided and the extent to which the child will be able to participate in regular education programs; (d) the projected initiation date as well as the anticipated duration of services; and (e) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved. The Act also requires that each child's IEP be reviewed at least annually.

Local education agencies and intermediate education units are required to apply to the appropriate SEA in order to qualify for federal support. The application must

- assure that federal funds will be used exclusively to pay the excess costs attributable to the education of children with disabilities

- provide that all children with disabilities will be identified, located, and evaluated
- establish policies to safeguard the confidentiality of personal records
- establish a goal of providing full educational opportunities to all children with disabilities and a detailed timetable for accomplishing this goal
- describe the kinds and number of facilities, personnel, and services necessary to accomplish the goal

The state education agency is authorized to withhold federal funds if any local agency or intermediate education unit fails to comply with the above requirements.

In addition, state or local education agencies are required to provide an opportunity for impartial due process hearings when a parent or guardian presents a complaint relating to the child's identification, evaluation, educational placement, or program of services. At such hearings, the parents have certain rights, including the right to be represented by counsel, to present evidence, cross-examine and compel the attendance of witnesses, and receive a statement of factual findings and decisions.

Part B stipulates that the state education agency is to be responsible for ensuring that the provisions of the state's special education plan are carried out. In addition, the state agency is to assure that all education programs for children with disabilities, including those administered by other state and local agencies, are under its general supervision and meet SEA standards.

All recipients of federal assistance under Part B of the IDEA are required to take affirmative steps to employ and advance in employment qualified individuals with disabilities. Section 607 of the Act also authorizes such sums as may be necessary to allow the Secretary of Education to award grants to assist state and local education agencies to remove architectural barriers in educational facilities.

Preschool State Grants

Under Part B, separate allotments are also made to the states under the Preschool Grants Program (Section 619), created in the Education of the Handicapped Act Amendments of 1986, to encourage the provision of special education and related services to preschool children with disabilities, ages three through five. Such funds are awarded to state education agencies to supplement their basic Part B allotment to the extent that the state is providing a free appropriate public education for children with disabilities within this age range. Federal requirements governing the Preschool Grants Program are the same as those for the Basic State Grants Program under Part B of the IDEA.

States are eligible to receive per capita allowances based on the number of children with disabilities ages three through five who were receiving special education and related services on December 1 of the previous fiscal year. The maximum basic per capita allowance is $1,500 in FY 1992 and thereafter. Funding increased over a four year period from $300 in FY 1987, $400 in FY 1988, $500 in FY 1989, $1,000 in FY 1990 and FY 1991, to the current level of $1,500 in FY 1992 and thereafter.

A state must pass at least 75 percent of its Part B preschool allotment through to LEAs or intermediate units. Up to five percent may be used for administration of the program; 20 percent may be reserved by the SEA for planning and development of a comprehensive delivery system involving direct and supportive services for children with disabilities, ages three through five, and, at the state's discretion, to furnish a free appropriate public education to two year old children with disabilities who will reach their third birthday during the school year.

In FY 1991 and succeeding fiscal years, the Secretary of Education has awarded grants only to states which (a) met the eligibility requirements for Part B grants (i.e., basic grants to the states for educating children with disabilities, 3 through 21 years of age); and (b) had an approved state plan or law that assures ". . . the availability under state law and practice . . . of a free appropriate public education for all children [with disabilities] ages three to five, inclusive." Currently all states have enacted mandates that ensure a free appropriate public education for all eligible three through five year old children with disabilities.

The appropriation for the preschool grants program in FY 1993 was $325.8 million. The FY 1994 request is $339.3 million, or an increase of $13 million (4.1 percent) over FY 1993. The FY 1995 request is $367.3 million, or an increase of $28 million (8.3 percent) over FY 1994.

III. Historical Background of the State Grant Program Under the IDEA

The Individuals with Disabilities Education Act, State Grant Program, has had a long history intertwined with the struggle for civil rights in America, and is marked by bold Congressional action to enshrine in law and practice the right to a free and appropriate education for all children and youth with disabilities.

Although the first federal laws designed to assist individuals with disabilities date back to the early years of the Republic, prior to World War II the focus of these laws was on war veterans with service-connected disabilities. Children and youth with disabilities were generally denied the right to a public education, although schools or institutions separate from local schools for children with particular disabilities (such as deaf and blind children) were established as early as the 1820s in some states. State compulsory attendance laws, which began to be passed in the late nineteenth century, also generally allowed for the exclusion of exceptional children who could not, according to the local superintendent, profit from an education. In other states, provisions allowed children with disabilities to be excluded from publicly supported education if no "appropriate" program was available or if special transportation was required. Slowly throughout the twentieth century, several states upgraded their special education programs and services; however, they were relatively few in number until given impetus by the postwar civil rights movement, when the parents of exceptional students began to organize and demand educational services "not as a matter of charity, but as a civil right" (Mosher, Hastings, and Wagoner, 1979, pp. 16 ff.).

Likewise, the federal presence in elementary and secondary education in general, and special education, in particular, was negligible until mid-century, when President Lyndon Johnson's Great Society legislation created major federal assistance programs to promote educational equity and protect citizens against discrimination through such legislation as the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Elementary and Secondary Education Act (ESEA) of 1965 (Fraas, 1986).

The enactment of the landmark Elementary and Secondary Education Act (P.L. 89-10) in 1965 marked a significant shift in the federal role in financing elementary and secondary education, and promoted educational opportunity for economically disadvantaged students through the compensatory education program, authorized as Title I (currently Chapter 1) of the ESEA. Although not specifically mentioned in the Act, a Senate Committee on Labor and Public Welfare report on the legislation defined educationally disadvantaged children eligible for Title I assistance to include children and youth with disabilities, based on an Office of Education determination (U.S. Congress, Senate, 1965, pp. 15-16; Fraas, 1986, pp. 6-7).

However, in 1966, Congressional hearings before an ad hoc Subcommittee of the Education and Labor Committee revealed that only about one-third of the 5.5 million children and youth with disabilities in the country were being provided appropriate special education services. According to a House Committee report issued at the time, the remaining two-thirds were either totally excluded from public schools or "sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out'." Federal programs directed at children with disabilities, the Committee reported, were "minimal, fractionated, uncoordinated, and frequently given a low priority in the education community" (U.S. Congress, House, June 26, 1975, p. 2).

Federal Grants to States

In response to these and other issues, Congress added a new Title VI to the Elementary and Secondary Education Act (P.L. 89-750) in 1966. Under this new authority, a two-year program of project grants to the states was established to assist in the education of children and youth with disabilities. Allotments were based on the population of exceptional children ages 3 through 21 years in the state. This included the mentally retarded, hearing impaired, deaf, speech impaired, visually impaired, seriously emotionally disturbed, physically disabled, and other health impaired, who were in need

of special education and related services. P. L. 89-750 also created a national Advisory Committee on Handicapped Children and mandated the creation of a Bureau of Education for the Handicapped within the U.S. Office of Education. The Bureau was to be responsible for administering programs and projects relating to the education and training of children and youth with disabilities, including programs and projects for training teachers and for conducting research in the field of special education. In later amendments, discretionary assistance programs were added to the legislation. The authorization of appropriations for Title VI under P.L. 89-750 was $50 million for 1967 and $150 million for 1968 (Fraas, 1986).

■ Education of the Handicapped Act (P.L. 91-230)

Despite these changes, some members of Congress urged that even greater assistance should be provided for the education of children and youth with disabilities because of the high numbers of school-aged children unserved by the states. The House Committee on Education and Labor called for full program funding, finding that the history of the special education program had been "marked by serious discrepancies between authorizations and appropriations" (U.S. Congress, House, 1969).

Subsequently, the Elementary and Secondary Education Amendments of 1970 repealed Title VI (as of July 1971) and created a separate Act, P.L. 91-230, entitled the Education of the Handicapped Act (EHA). The EHA consolidated a number of previously separate federal grant authorities relating to children with disabilities in one statute.[7] This new authority, the precursor of the current Individuals with Disabilities Education Act (IDEA), was the first free-standing statute for children and youth with disabilities.

The Education of the Handicapped Act was divided into seven parts. *Part A* set forth the title of the bill and the definitions, provided for the Bureau of Education for the Handicapped and the National Advisory Committee on Handicapped Children, and provided for the acquisition of equipment and the construction of necessary facilities. *Part B* authorized grants to the states and outlying areas to assist them in initiating, expanding, and improving programs for the education of children with disabilities. *Part C* authorized grants for regional resource centers; centers for deaf-blind children;

[7]However, the P.L. 89-750 State grant program of project grants remained essentially intact until 1974, cf., Fraas, 1986.

experimental preschool and early education programs; and any related research, innovation, training and dissemination activities. *Part D* authorized grants to institutions of higher education and state education agencies to assist in recruiting and training special education personnel, as well as physical education personnel. *Part* E authorized grants for research relating to education and recreation for exceptional children and youth. *Part F* authorized the National Center on Educational Media and Materials for instructional media. This centralized agency would coordinate communication between various aspects of a comprehensive media and materials development and delivery system, in order to make instructional media and technology available to all programs in education for children with disabilities. *Part G* authorized special programs for children with specific learning disabilities.

The state allotment under Part B of P. L. 91-230 was based on the ratio of the number of children aged 3 through 21 in a state, to the number of children ages 3 through 21 in all states, with the minimum grant established at the greater of $200,000 or three-tenths of one percent of available funds. The authorization of appropriations was $200 million in fiscal year (FY) 1971, $210 million in FY 1972, and $220 million for FY 1973 (P.L. 91-230, Section 611(b), Section 612 (a)(2)).

■ Education Amendments of 1974 (P.L. 93-380)

By 1974, when the EHA state grant program was next reauthorized, the concern over funding adequacy had heightened, and was enjoined by mounting judicial activism concerning the educational rights of individuals with disabilities. Thus, the 1974 Amendments provided a one-year "emergency" program of assistance to the states, and set the stage for the enactment of the landmark P.L. 94-142 in 1975—the Education for All Handicapped Children Act (Fraas, 1986).

As background, an "Education for All Handicapped Children Act," first introduced by Senator Harrison Williams, Chair of the Senate Committee on Labor and Public Welfare, and Representative John Brademas, Chair of the House Subcommittee on Select Education, was proposed as early as the 92nd Congress in 1972.[8] These similar bills would have authorized federal assistance to the states to assist them in implementing court mandates (see

[8]The legislative history draws on Fraas, 1986.

below) that all children and youth with disabilities receive educational services, by providing federal payments to the states for up to 75 percent of the excess costs incurred by school districts for educating exceptional students. This was in contrast to the existing federal program of project grants at that time. Expansion of federal assistance was conditioned on a school district's adoption of specific requirements for individual planning, evaluation, and due process requirements for children and youth with disabilities. However, no action was taken on these bills in the 92nd Congress.

At the beginning of the 93rd Congress, Senator Williams and Representative Brademas reintroduced the "Education for All Handicapped Children Act," and extensive hearings were held by the House Subcommittee on Select Education and the Senate Subcommittee on the Handicapped. State government representatives generally were enthusiastic about the bills, mainly because of the proposed increase in federal aid to 75 percent of the excess costs for educating an exceptional child or youth, which state officials believed would have a "significant impact on their ability to implement their full service mandates in a timely manner" (Fraas, 1986, p. 13).

However, the Nixon administration opposed the enactment of the Williams and Brademas proposals, on both philosophical and fiscal grounds. On June 17, 1974, Under Secretary of Health, Education, and Welfare Frank C. Carlucci stated that the legislation would result in a major shift in the federal role in education from "capacity building to major support for services"; that education was a state and local responsibility and therefore should be funded by states and localities; and that state surpluses in the face of federal deficits and the high priority afforded special education by the 50 state governors indicated that states and localities could absorb the increased costs of educating exceptional children and youth.

As a result, the 1974 Amendments, based on a proposal introduced by Senator Mathias, were enacted in lieu of the Williams and Brademas bills. The 1974 Amendments were adopted as an interim "emergency" measure pending the enactment of the "Education for All Handicapped Children Act," which was being crafted by the Committee on Labor and Public Welfare (cf., Humphrey, 1974).

Court Cases. Provisions of the Education of the Handicapped Act Amendments of 1974,[9] followed a series of landmark court cases establishing in law the right to education for all children and youth with disabilities. In 1971, the Federal Eastern District Court of Pennsylvania approved a consent agreement establishing that every school-age mentally retarded child in the Commonwealth of Pennsylvania had a right to a public education (*Pennsylvania Association for Retarded Children [P.A.R.C.] v. Commonwealth of Pennsylvania,* 1971-1972). While P.A.R.C. was the first major suit focused solely on establishing the legal right to a public education for mentally retarded children, it was followed in that same year by a court order from the U.S. District Court in the District of Columbia (*Mills v. Board of Education of the District of Columbia,* 1972) that restated the same principle but extended it to all exceptional children. Specifically, the court said that all children and youth, regardless of any exceptional condition or disability, have a constitutional right to a publicly-supported education. The court addressed the issue of financing directly, finding that insufficient funding was no excuse for denying special education students an appropriate education, stating

> The defendants are required by the Constitution of the United States, the District of Columbia Code, and their own regulations to provide a publicly-supported education for these "exceptional" children. Their failure to fulfill this clear duty to include and retain these children in the public school system, or otherwise provide them with publicly-supported education, and their failure to afford them due process hearings and periodical review, cannot be excused by the claim that there are insufficient funds . . . . The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child.

After these initial decisions in *P.A.R.C* and *Mills* during 1971 and 1972, and with similar decisions in 27 states by 1974, the Senate Committee on Labor and Public Welfare, deliberating over federal aid to children and youth with disabilities, echoed the sentiment at the time, stating: "it is clear today that

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[9]During the first session of the 93rd Congress, the Senate passed S. 896, the Education of the Handicapped Amendments of 1973. The House companion bill was made part of the Elementary and Secondary Education Amendments of 1974 in the House Education and Labor Committee. The Senate took the text of S. 896 and made it Title VI of S. 1539, the Senate Elementary and Secondary Education Amendments of 1974.

this 'right to education' is no longer in question" (U.S. Congress, Senate, 1976).

The 1974 Amendments. The 1974 Amendments, therefore, significantly expanded federal authority and appropriations for the basic aid-to-states program (Part B) for the education of children and youth with disabilities, in order to help states faced with meeting expanded court or legislatively imposed "right to education" mandates in the face of fiscal constraints. The Senate Committee on Labor and Public Welfare explained:

> Increased awareness of the educational needs of handicapped children and landmark court decisions establishing the right to education for handicapped children pointed to the necessity of an expanded Federal fiscal role. (U.S. Congress, Senate, 1976, p. 193)

Importantly, the 1974 Amendments also enhanced the protection of the rights of children and youth with disabilities by due process procedures and the assurance of confidentiality, laid the basis for comprehensive planning, and authorized a sharp increase in funds to assist states in educating children and youth with disabilities in the public schools. P.L. 93-380 required the states to establish a goal of providing full educational opportunities for all children and youth with disabilities and submit a detailed plan and timetable for achieving this goal by August 21, 1974. In addition, the Act provided procedural safeguards for use in identifying, evaluating, and placing children and youth with disabilities; and mandated that such youngsters be integrated into regular classes whenever possible. It also required the states to provide assurances that testing and evaluation materials would be selected and administered on a nondiscriminatory basis, and placed a priority in the use of the EHA funds for children not receiving an education program. Finally, P.L. 93-380 elevated the head of the Bureau of Education for the Handicapped to the status of Deputy Commissioner of Education.

Fiscal Changes. The fiscal provisions of the Education of the Handicapped Amendments of 1974 included a significant change in the EHA state grant program that had originated in a Senate amendment, which had been offered by Senator Charles Mathias of Maryland (see Fraas, 1986). The "Mathias Amendment" proposed a federal entitlement to the states of up to $15 times the average daily attendance in public schools in the state. In support of this amendment, Senator Mathias pointed to a recent court decision in Maryland that had reaffirmed the findings of other courts that all children with

disabilities must have access to a free public education. He argued that such court mandates were impossible to implement with available state and local funds, and that federal support must be more generous, asking

> Why must the Congress withhold desperately needed financial support? Why should the Congress stand idly by while court action is heaped upon court action? Why should we leave it up to the judicial branch to affirm the Constitution? (Mathias, 1974, p. 15269)

Senator Stafford, ranking minority member of the Subcommittee on the Handicapped, added fundamental protections to the Mathias proposal for increased funding in an amendment that was adopted in the Senate. The Amendment

- required states to adopt a goal of providing a free appropriate public education to all handicapped children
- established a priority of serving children not currently receiving an education
- required that children with disabilities be served in the least restrictive environment
- required due process guarantees
- limited authorizations to FY 1975

The House version of the bill to reauthorize the State grant program did not offer an entitlement program and otherwise differed from the Senate bill, as amended. Conferees authorized a one-year program of federal assistance to the states based on the Mathias Amendment with certain changes. The per child entitlement was reduced to $8.75 and changed from the number of children and youth enrolled in school to the total aged 3 through 21 year old state population. Early identification and treatment of children with disabilities under 3 years of age were added to the purposes for which funds could be used. Also, the intent that children and youth with learning disabilities be included under "other health impaired" was added. However, the protections afforded exceptional students remained intact.

P. L. 93-380 became law on August 24, 1974. FY 1975 appropriations were $100 million, approximately 15 percent of the full entitlement, but twice the FY 1974 amount for the state grant program. An additional $100 million was provided for obligation in FY 1976 (Fraas, 1986, p. 18). No further action was taken by the 93rd Congress.

■ Hearings to Extend the EHA Amendments, 1975

Subsequently, in 1975, extensive hearings to extend the Education of the Handicapped Amendments of 1974 were held by the House Subcommittee on Select Education and the Senate Subcommittee on the Handicapped. The hearings further revealed the need to provide financial assistance to states to aid them in providing a free and appropriate education to all children and, thus, to substantially extend the law. According to the Committee on Education and Labor in the U.S. House of Representatives,

> an increasing number of court decisions throughout the Nation are establishing the principle that all children are entitled to a free public education appropriate to their needs. State financial resources are frequently inadequate to the task of providing an education for all handicapped children. (U.S. Congress, House, June 26, 1975, p.131)

The Senate Committee on Labor and Public Welfare, concurred: "states have made substantial efforts to comply" it was found; "however, lack of financial resources have prevented the implementation of the various decisions which have been rendered" (U.S. Congress, Senate, 1976, p. 197).

Testimony had indicated that a large percentage of children with disabilities remained unserved or underserved across the states, often due to state financial constraints. For example, statistics provided by the Bureau of Education for the Handicapped estimated that of the more than eight million children (birth through 21 years) with disabilities requiring special education and related services, only half (3.9 million) were receiving an appropriate education; 1.75 million children with disabilities, "usually those with the most severe disabilities," were receiving no education at all; and 2.5 million children with disabilities were receiving an inappropriate education (U.S. Congress, Senate, 1976, pp. 131, 198). The long-range implications of these statistics, the Senate Committee admonished,

> are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society. (U.S. Congress, Senate, 1976)

The Committee summed up the situation by calling for a broader federal fiscal role in providing equal opportunities to children and youth with disabilities. The Committee report on the bill stated this intent by asserting

> Certainly the failure to provide a right to education to handicapped children cannot be allowed to continue. . . . It is this Committee's belief that the Congress must take a more active role under its responsibility for equal protection of the laws to guarantee that handicapped children are provided equal educational opportunity. It can no longer be the policy of the Government to merely establish an unenforceable goal requiring all children to be in school. [This bill] takes positive necessary steps to ensure that the rights of children and their families are protected. (U.S. Congress, Senate, 1976, p. 199)

■ Education for All Handicapped Children Act of 1975 (P.L. 94-142)

The Education for All Handicapped Children Act was reintroduced in the 94th Congress by Senator Williams in the Senate and by Representative Brademas in the House. Additional hearings were held in both the House and the Senate with action completed by Fall, and the bill (P.L. 94-142) was signed into law by President Ford on November 29, 1975.

The Ford Administration had opposed the bill on the grounds that the education of children and youth with disabilities was primarily a state responsibility and that authorized funding levels were too high. However, the President signed the bill after both houses approved the conference report by overwhelming margins (Congressional Quarterly, Inc., 1976).

Passage of the Education for All Handicapped Children Act of 1975 marked a significant milestone in the nation's efforts for exceptional children and expanded the Part B program into a multi-billion dollar federal commitment

to assisting state and local education agencies to provide appropriate education services for children with disabilities.[10]

As signed into law and discussed in the 1975 *Congressional Quarterly Almanac* (1976, pp. 651-652), P.L. 94-142

- Kept in place for fiscal 1976-77 the [population-based] allocation formula used in fiscal 1975 which granted the states $8.75 for each child in the state to be used specifically to educate handicapped children; stipulated that appropriations for this grant program could not exceed $100 million in fiscal 1976 and $200-million in fiscal 1977; provided for such sums as necessary during the three-month transition period between fiscal 1976 and fiscal 1977; assured that no state would receive less than it had in the previous fiscal year or $300,000, whichever was greater.

- Established a new grant formula, to take effect permanently in fiscal 1978, authorizing grants equal to the number of handicapped children aged 3 through 21 who received a special education multiplied by: 5 percent of the national average per pupil expenditure in fiscal 1978; 10 percent of that expenditure in fiscal 1979; 20 percent in fiscal 1980; 30 percent in fiscal 1981; and 40 percent in fiscal 1982 and each succeeding year; stipulated that no state would receive less than it had in fiscal 1977.

- Stipulated that no state could count as handicapped more than 12 percent of all its children aged 5-17; provided that only one-sixth of those counted as handicapped could be children with specific learning disabilities; required the U.S. Commissioner of Education to establish criteria for determining what would be considered a specific learning disability and to describe diagnostic procedures to be used in determining whether a child had such a disability; dropped the limitation on the number of children with specific learning disabilities that could be counted as handicapped for purposes of the formula grant after the commissioner published the final regulations.

[10]P. L. 92-142 amended the provisions for state assistance under Part B of the Education of the Handicapped Act (EHA, P.L. 91-230).

- Required each state to provide a free and appropriate education to all its handicapped children between 3 and 18 by September 1, 1978, and to its handicapped children between 18 through 21 by September 1, 1980; stipulated that the requirements would not apply to children aged 3 to 5 and 18 through 21 in states where the federal law would be contrary to state law or court order.

- Required that first priority be given to children who were not presently receiving an education and that second priority be given to those with the most severe handicaps in each handicap category that were receiving inadequate educations.

- Encouraged states to provide education for handicapped children aged 3 to 5 by authorizing incentive grants of an additional $300 for each such child receiving educational services.

- Stipulated that beginning in fiscal 1979, the state must pass through to its school districts 75 percent of the federal grants; stipulated that the money would be distributed to the districts on the basis of the number of handicapped children each district served; required the states to spend no more than 5 percent or $200,000, whichever was greater, for administration of the program; required the states to develop and implement personnel development plans, including in-service training of special education teachers and support personnel, and to provide technical assistance and other aid to the local school districts.

- Stipulated that no grants would be made to school districts that were eligible for less than $7,500; required the state to make provision for educating handicapped children that is, the state and local school district would have to first spend as much money on each handicapped child as they did on each normal child; stipulated that federal funds could not supplant state and local funds.

- Required the local school district, in consultation with the teacher, the parents and the child, if appropriate, to establish an individualized educational program for each handicapped child; required that the program be written and that it set out the annual goals, short-term objectives and specific services to be provided the child; required an initial meeting of the people involved when the child entered the

school system, with another review meeting during that school year and at least annual reviews thereafter.

- Required that, where appropriate, handicapped children be educated with non-handicapped children.

- Strengthened existing due process procedures to guarantee the rights of handicapped children, including due process in all matters regarding identification, evaluation and placement of the child, assurance that testing materials and procedures would not discriminate racially or culturally, and assurance that information gathered by the state would be kept confidential.

- Required the Commissioner of Education to report annually to Congress on a wide variety of data on the education of handicapped children, including the number served, the amount of funds allocated at the federal, state and local levels and the number of children who need special services; authorized such sums as might be necessary for evaluation studies.

- Authorized such appropriations as might be necessary for grants to state and local education agencies to remove architectural barriers that might impede the handicapped.

- Required that all final regulations relating to the bill be submitted to Congress; if Congress did not disapprove the regulations within 45 days, they would take effect. (Congressional Quarterly, Inc., 1976, pp. 651-652)

■ Financing Provisions of P.L. 94-142

P.L. 94-142, Part B, provided for a new finance formula replacing the previous population-based grant. Federal financial assistance to the states, under the Education for All Handicapped Children Act, was provided for the education of 3 through 21 year olds based on (a) an average of children receiving special education and related services on February 1 and October 1 (of the fiscal year preceding the fiscal year for which the determination is made); and (b) one or more of nine physical or mental disabilities. (Disabilities that are primarily the result of cultural or economic disadvantages are not included within the definition of the law.) The Act added orthopedic

impairments and specific learning disabilities to categories established under prior law to identify children eligible for special education services. Prior law included mentally retarded, hard of hearing, deaf, speech impaired, visually impaired, seriously emotionally disturbed, and other health impaired.

The Senate Committee on Labor and Public Welfare commented on the new finance provisions of P.L. 94-142 which provided state aid based on identification and labeling of children within approved disability categories in contrast to previous law that provided funding based on a state's population of children aged 3 through 21. Of particular concern was the possible negative effects the labels would produce. However the Committee found

> In the education process, the appropriate identification of handicapping conditions must take place in order to assure that a child receives appropriate services designed to meet his or her needs . . . In the absence of this process and without the provision of appropriate services, the education process for the handicapped child is totally inadequate and inappropriate. There is nothing in this process, however, which justifies or necessitates the carrying over of these classification labels into the classroom educational process itself such that the child becomes thereby labelled as having a particular handicap which for that reason, sets the child apart as being different. In this regard, the Committee believes that the greatest possible care must be taken to assure that the identification and classification process is utilized solely for designing an individually tailored educational program for each handicapped child. (U.S. Congress, Senate, June 2, 1975, p. 217)

P.L. 94-142 stipulated numerous provisions to guard against disability discrimination and erroneous classification, and to provide for the rights of children and youth with disabilities to a "free and appropriate education." These provisions included evaluation and testing to be administered in the child's native language and a limitation on eligibility for special education and related services of 12 percent of all children ages 5 though 17 in the state (U.S. Congress, Senate, 1976, p. 101). The 12 percent limitation was intended to discourage "over-labeling" of children (U.S. Congress, Senate, 1976, p. 136). Action to prohibit discrimination on the basis of disabilities in all programs or activities receiving federal funds was first enacted in 1973 under Section 504 of the Rehabilitation Act.

P.L. 94-142 included new or expanded definitions for free and appropriate public education, related services, and special education. The term special education in the Act means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of an exceptional child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions (P.L. 94-142, Sec. 602, [16]). The Committee on Education and Labor elaborated on the settings in which special education programs and services could be provided, explaining that

> The Committee understands the importance of providing educational services to each handicapped child according to his or her individual needs. The needs may entail instruction to be given in varying environments, i.e., hospital, home, school, or institution. The Committee urges that where possible and where most beneficial to the child, special educational services be provided in a classroom situation. An optimal situation, of course, would be one in which the child is placed in a regular classroom. The Committee recognizes that this is not always the most beneficial place of instruction. No child should be denied an educational opportunity; therefore, [the bill] expands special educational services to be provided in hospitals, in the home, and in institutions. (U.S. Congress, House, June 26, 1975, pp. 132-133)

Additionally, the Senate Committee encouraged special arrangements for the provision of educational programs and services, such as those provided by the combination of local educational agencies, or the creation of special school districts in order to meet the special needs of children and youth with disabilities (U.S. Congress, Senate, June 2, 1975, p. 206).

■ Entitlement Formula Under P.L. 94-142

The Education for All Handicapped Children Act established a new "entitlement" formula, to go into effect September 31, 1977, and remain in effect permanently thereafter. The maximum amount of the grant that a state was entitled to receive was equal to the number of children with disabilities, ages 3 through 21, receiving special education and related services times a specified percentage of the national average per pupil expenditure (APPE) in public elementary and secondary schools in the United States. As discussed previously, P. L. 94-142 called for a gradually increasing percentage of federal aid, beginning with 5 percent of the APPE in FY 1978, to 10 percent of the

APPE in FY 1979, to 20 percent in FY 1980, to 30 percent in FY 1981, and to 40 percent in FY 1982 and succeeding fiscal years. A *hold harmless* provision was added, which stipulated that no state could receive an amount in any fiscal year that was less than the amount such state received in the fiscal year ending September 30, 1977, the final year of the previous population-based formula.

Of the total funds appropriated by Congress, one percent was reserved for the territories, and one percent of the aggregate state entitlement was provided for the Secretary of the Interior, consistent with other provisions of the Act. The remainder of the funds, including those not distributed to LEAs because of the $7,500 limitation (see below), were required to be distributed by the SEA in a manner consistent with the provisions of the Act.

P.L. 94-142 stipulated that beginning in 1979 and thereafter, 25 percent of the funds allocated to states may be used by the SEA; of this, up to 5 percent or $200,000 may be used for administration of the Act. The remaining 20 percent could be used by the SEA for support and direct services, but must be matched on a program basis from nonfederal funds. Seventy-five percent of the funds allocated to states must be distributed to LEAs and IEUs in the state in an amount which bears the same ratio of children and youth, ages 3 though 21, receiving services in an LEA or IEU to the aggregate number of such children in the state. In order to receive funds, the LEA or IEU had to be eligible to receive at least $7,500 and submit an application which met the requirements of the Act.[11] Children with disabilities, placed in a private school or educational agency by an LEA, were entitled to receive special education and related services at no cost to their parents or guardians. A ratable adjustment applied if sums appropriated were insufficient to meet the full obligations under the Act.

■ Formula Changes Under P.L. 94-142

The new formula enacted under P.L. 94-142 was a significant shift from the way funds had previously been distributed under prior law, which based allocations (a) *to states*, on the number of all children, i.e., population, ages 3 through 21 within a state, times $8.75 per child, and (b) *within states*, on a discretionary project basis.

[11] See Footnote 4.

Related to the formula change under P.L. 94-142 from a population count to a special education child count, the Senate Committee on Labor and Public Welfare explained its rationale:

> The Committee wished to develop a formula which would target funding and eligibility for funding on the population of handicapped children for whom services would be provided. The Committee adopted this formula in order to provide an incentive to states to serve all handicapped children and to assure that the entitlement is based on the number of children actually receiving special education and related services within the State and for whom the State or the local educational agency is paying for such education. The formula in existing law, the Education of the Handicapped Act, distributes Federal funds to the States on the number of all children, aged three to twenty-one within such State. The Committee has developed a formula which generates funds on the basis of the handicapped children receiving an education within a State. (U.S. Congress, Senate, June 2, 1975, pp. 204-205)

Related to the distribution of funds within a state which shifted under P.L. 94-142 from a discretionary project grant to a formula allotment based on the count of an LEA's special education-eligible children and youth, the House Committee reporting the bill explained the following:

> It is the Committee's view that a program of this scope must distribute Federal funds on a local allocation basis. . . . especially in light of the requirement that each local educational agency must participate in individualized educational planning for each handicapped child, the local allocation approach ensures that the amount which any local educational agency receives will bear some relationship to the cost of educating the children involved. (U.S. Congress, House, June 26, 1975, p. 16)

■ Variations in the Number of Children with Disabilities Within States

The new formula generated under P.L. 94-142 was also sensitive to testimony presented by the Council for Great City Schools, the National School Boards Association, and other individuals and organizations representing local school districts. Such groups had indicated that the distribution provided in the previous law may not represent the substantial populations in urban and other school districts in need of services.

Thus, a mechanism for within-state distribution was adopted that based funds on special education eligible pupils. Such a system was intended to allow funds to flow to areas of need with relatively higher rates of special education eligible students and create an incentive to locate and serve those students. In this regard and as related to the shift in a formula based on population (census) to one based on identified children with disabilities, the Senate Committee on Labor and Public Welfare stated that it

> believes the simple "pass-through" of funds based solely on the population of the local educational agency fails to provide an adequate incentive for serving all children . . . [and] reduces the ability of a State to target funds in such a way as will assure all handicapped children a free and appropriate education. (U.S. Congress, Senate, June 2, 1975, p. 206)

■ Level of Funding Per Pupil Served

In addition to providing a major change in Part B from a population-based grant to a formula based on children with identified disabilities, the level of funding per pupil was significantly altered under the Education for All Handicapped Children Act of 1975 (P.L. 94-142). Previously, $8.25 was provided based on a state's 3 through 21 year old population. Under P.L. 94-142, funding was provided based on the number of identified children and youth with disabilities. The funding level per eligible child or youth was determined by a "reasonable dollar amount which relates to actual dollars spent on handicapped children" (U.S. Congress, Senate, June 2, 1975, p. 205).

The Senate Committee on Labor and Public Welfare and the House of Representatives Committee on Education and Labor based the funding level adopted per eligible child in P.L. 94-142 on research studies done in 1970 by the National Education Finance Project. This research estimated the actual cost of educating children and youth with disabilities is, on the average, double the cost of educating children and youth without disabilities (U.S. Congress, Senate, June 2, 1975, p. 205). According to the House Committee on Education and Labor,

> It is well established that the average cost of educating handicapped children is well above the national per pupil average for all children as evidenced by the findings of the National Educational Finance Project

(NEFP-Study No. Two, 1970) which reported an average cost index among the various diagnostic categories of handicapping conditions of 1.9 above the average cost for non-handicapped children with a range of 1.18 for a child with a speech handicap to 3.69 for a child with a physical handicap. (U.S. Congress, House, June 26, 1975, p. 136)

■ Federal Role in Financing Special Education

Also figuring into the discussion of the federal allocation under P.L 94-142 was the proper federal role in financing education and related services for children with disabilities. The Senate Committee stipulated that the funding provided under P.L. 94-142 was to assist states in carrying out their responsibilities under state laws rather than provide full federal funding for total special education costs:

> The Committee rejects the argument that the Federal Government should only mandate services to handicapped children if, in fact, funds are appropriated in sufficient amounts to cover the full cost of this education. The Committee recognizes the States' primary responsibility to uphold the Constitution of the United States and their own State Constitutions and State laws as well as the Congress' own responsibility under the 14th Amendment to assure equal protection of the law. As specifically stated by Judge Waddy [in *Mills v. Board of Education of the District of Columbia,* 1972) . . . "The defendants are required by the Constitution of the United States, the District of Columbia Code and their own regulations to provide a publicly-supported education for these 'exceptional' children. Their failure to fulfill this clear duty . . . cannot be excused by the claim that there are insufficient funds" (U.S. Congress, Senate, June 2, 1975, p. 213).

Thus, using research to establish a cost, with the role of the federal government springing from the interpretation of state and federal law, the House bill provided for funding to support 50 percent of the average per pupil expenditure (APPE) in the United States per eligible child under its proposed formula. The Senate bill provided for $300 per eligible student, which it found represents approximately 25 percent of the additional (excess) cost of serving students with disabilities.

Representatives Goodling, Quie, and others, providing "Additional Views" noted that . . . "the bill sets up an incentive for the states to serve more

children, an effort to reduce the incentive for a state to mislabel children as handicapped is through the limit in the bill that the number of handicapped claimed could not exceed 12 percent of all children age [sic] 5 to 17 within each state." However, although the concept of distributing money to encourage states to serve more children and youth with disabilities may be a very positive one, the "entitlement" or target established by the bill "at this time is impossible in light of the Federal budgetary problems" (U.S. Congress, Senate, 1976, p. 184).

Thus, given the revenue requirements that either the House or Senate bill would generate, the Act provided for a phased-in allotment per eligible child or youth, which would increase from 5 percent of the APPE in FY 1978 and eventually reach 40 percent of the APPE in FY 1982 and thereafter.

The Committee noted, however, that other sources of federal aid exist that can assist states in providing education and related services to children with disabilities. These included Title I, III, and IV of the Elementary and Secondary Education Act (ESEA); funding available under Part A of that Act for Handicapped Children (P.L. 89-313); the Vocational Education Act; the Rehabilitation Act; the Head Start Program; social services; and the Developmental Disabilities Act (U.S. Congress, House, June 2, 1975, p. 213). This indicates an intent that federal funding streams could be integrated on behalf of children with disabilities.

■ Excess Costs and Supplement not Supplant Provisions

The intent of the Congress was that federal funds expended for programs under Part B should be used to pay only the excess costs directly attributable to the education of handicapped children (U.S. Congress, House, June 26, 1975, p. 143). The term "excess costs," as defined in the Act means

> those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student . . . and which shall be computed after deducting amounts received under the Act or under Title I or VII of the Elementary and Secondary Education Act of 1965, and any State or local funds expended under Part B or such titles.

This provision was underscored by requirements that funds supplement and not supplant state and local funding and be expended only on children and youth with disabilities. According to the Senate Committee report,

> Local educational agencies should not look to this assistance as general revenues or generalized assistance to mitigate their own responsibilities with regard to providing a free appropriate public education for all handicapped children. The primary purpose of funds under this Act is to assure all handicapped children an appropriate education. (U.S. Congress, Senate, June 2, 1975, p. 206)

■ Allotment Limitations and Specific Learning Disabilities

Under P.L. 94-142, a limitation on the number of children counted for allocation purposes was established at 12 percent of the number of all children ages 5 through 17 within a state in order to limit overclassification and mislabeling; in addition, a new category was added for children with specific learning disabilities (SLD). Because questions arose regarding what criteria would be used to determine whether a child or youth was learning disabled, the number of children and youth that could be counted as learning disabled for allocation purposes was limited, for a maximum of one year, to two percent of all children ages 5 through 17, within a state. This time frame would allow the Commissioner of Education to establish eligibility criteria for specific learning disabled children and youth eligible under the Act. According to the House Committee on Education and Labor,

> The problem . . . is the absence of any clear or acceptable criteria for judging whether a child is significantly handicapped because of a possible learning disability. Testimony received from the Office of Education indicated that the entire lower quartile of any normal class could be classified as having some learning disability . . . Falling within this category are those children with identifiable and serious learning disabilities such as dyslexia and autism that the bill is designated to reach. (U.S. Congress, House, June 26, 1975, p. 32)

Some members of Congress, providing "Additional Views" on the legislation, took issue with the one-year limitation on the number of eligible SLD children and youth counted under the Act because it "is totally inconsistent to establish a requirement that every handicapped child must be served and then single out one group and limit their participation in these programs . . .

Approximately 24 percent of the total number of children with disabilities are estimated to be learning disabled, with 88 percent unserved." However, it was underscored that "these prevalence figures are not necessarily reflected in every state and do in fact vary drastically when comparing one state to another" (U.S. Congress, Senate, 1976, p. 187).

State Preschool Grants

The Education for All Handicapped Children Act of 1975 (P.L. 94-142) also included a separate authority to encourage states to serve children between the ages of three and five. States were entitled to receive up to $300 per annum in federal aid for each child with a disability in that age range receiving appropriate education services. However, per capita grants were to be ratably reduced during any fiscal year in which appropriations were insufficient to cover the states' full entitlement.

■ Education of the Handicapped Amendments of 1983 (P.L. 98-199)

In 1983 Congress amended the EHA to expand incentives for preschool special education programs from birth to five years of age, early intervention, and transitions programs. It also vested administrative authority for all programs under the EHA with the Office of Special Education Programs (OSEP); and language impairment was added as a disabling condition. Section 6 of P.L. 98-199 required changes in the Part B, State Grant Program to have a 90-day review period replacing the 30-day review period otherwise required for education programs by the General Education Provisions Act. Provisions related to data collection, annual reporting, and evaluations were added with a focus on evaluation, program impact, and effectiveness.

■ Education of the Handicapped Amendments of 1986 (P. L. 99-457)

In the 1986 Amendments to the Act (P.L. 99-457), Congress sharply increased the annual per capita allowance a state was eligible to receive on behalf of each preschool-aged child with a disability (discussed earlier in this paper). In order to qualify for such additional aid, a state must take steps to assure that all children with disabilities between three and five years of age are receiving appropriate special education services no later than the beginning of FY 1990 or, under certain circumstances, FY 1991. During FY 1987 through FY 1989, if the annual appropriation exceeded the amount necessary to make such payments to all participating states, the excess amount was to be distributed among the states based on their estimated increase in enrollment

compared to the preceding fiscal year; however, the additional amount received by any given state could not exceed $3,800 per student.

In addition to authorizing a sharp expansion in preschool grants, the EHA Amendments of 1986 (P.L. 99-457) established a new program of early intervention grants to the states under Part H and expanded the early education project grant program. The previous authority for planning, development, and implementation grants was eliminated and, instead, the Secretary was authorized to fund (a) demonstration and outreach programs as well as experimental projects and training related to exemplary early education models and practices; (b) a technical assistance program to aid states and other public and private agencies to expand early education services for children birth to eight years of age; and (c) early childhood research institutes, plus other research activities. In addition, early intervention and preschool services were added as a fundable activity under nearly all of the other discretionary training, research, and demonstration authorities of the Act.

■ Education of the Handicapped Amendments of 1990 (P. L. 101-476)

Among the noteworthy features of the 1990 Amendments (P.L. 101-476) were the following: (a) changing the name of The Education of the Handicapped Act to the Individuals with Disabilities Education Act; (b) revising the definition of the term "children with disabilities" to include "children with autism" and "children with traumatic brain injury," in addition to the previously noted disabilities that qualify a student for special education and related services under the IDEA; (c) substituting the term "disabilities" for the term "handicapped" throughout the Act; (d) clarifying the settings in which special education services may be delivered to include instruction in settings other than schools and traditional classrooms; (e) allowing suits in federal courts against the states to enforce the IDEA; (f) adding administrative provisions; (g) requiring the Secretary of Education to award grants to minority higher education institutions to help them compete in the IDEA discretionary grant competitions; and (h) deleting provisions related to the collection of information on state and local special education financing (Aleman, 1991).

- **The Individuals with Disabilities Education Act, Amendments of 1991 (P.L. 102-119)**

  The chief purpose of the Individuals with Disabilities Education Act Amendments of 1991 was to reauthorize Part H programs. Additional changes to Part B included (a) allowing states to include "developmental delay" as an eligibility category for preschoolers; (b) requiring Part B state plans to include policies and procedures for the smooth transition from Part H to preschool services; (c) providing for the flexible use of Part B and Part H funds during the transition; (d) increasing the maximum allocation under Section 619 from $1,000 to $1,500 per child; (e) increasing minimum funding for state administration from $350,000 to $450,000; and (f) providing for the improvement of services to Indian children with disabilities by clarifying the role of the Bureau of Indian Affairs (LRP Publications, n.d.).

IV. Conclusion

The landmark disability policy for children and youth, enacted in 1975 as P.L. 94-142, the Education for All Handicapped Children Act (currently the Individuals with Disabilities Education Act), marked a significant milestone in the nation's efforts in the provision of a free and appropriate education for exceptional children and youth. Overall, the provisions of the Act have remained remarkably resilient over the past two decades and are essentially intact as authorized. However, additional provisions have been added for infants and toddlers, disability categories have been expanded, and minor revisions have been made to further refine and update the law.

Federal special education policy for all children and youth with disabilities was enacted in the context of America's civil rights movement and was preceded by court rulings in a majority of states, which held that all exceptional children and youth had the right to a free and appropriate education that could not be diluted or excused because of fiscal restraints. This right was enshrined in law and practice under the historic Education for All Handicapped Children Act of 1975.

The federal fiscal role in special education policy under P.L. 94-142 was intended to assist all states in the full provision of a free and appropriate education for all children and youth with disabilities. This brief historical review of the legislation provides a record of Congressional intent concerning the numerous fiscal provisions of the Act and the purposes originally set forth in the law. The issues before Congress at that time are as relevant today as when they were first considered. They include such questions as whether the federal special education funding formula should be based on the total population of students in a state or only on children and youth who are identified as eligible for special education programs and services. Also at issue were the possible stigmatizing effects of labels, the relevant disability

categories to be included in the law and whether certain categories, such as students with specific learning disabilities, should be limited. A 12 percent limitation on the total number of children and youth identified by a state for federal assistance was eventually included in P.L. 94-142 in an attempt to discourage overclassification and mislabeling of exceptional children and youth, while providing an incentive to locate and serve all students and provide funding in proportion to need. Of particular interest to Congress were the incentives and disincentives of this and other fiscal provisions included in the law, the relevant federal fiscal role in special education policy, the distributional effects of the formula as related to equity considerations, and the establishment of an empirical base for cost determinations. Although many of these concerns accompany deliberations over federal legislation, special education policy is unique in that it established via statute the *right* of all children with disabilities to a free and appropriate education, and provided safeguards and procedural requirements attendant to the receipt of aid to asssure that right. The incentive for state and localities to comply with these historic provisions was the receipt of federal aid, intended to comprise 40 percent of the excess costs of providing a free and appropriate education for all children and youth with disabilities—a goal yet to be reached.

References

Aleman, S. R. (March 28, 1991) *Education of the Handicapped Act Amendments of 1990, P.L. 101-476: A summary.* (91-297 EPW). Washington, DC: Congressional Research Service, Library of Congress.

Chambers, J. & Martin, C. (1994, forthcoming). *Fiscal provisions of the Individuals with Disabilities Education Act: Analysis of national identification rates and incidence.* Palo Alto, CA: Center for Special Education Finance.

Congressional Quarterly, Inc. (1976). Aid to education of handicapped approved. (pp. 651-652). In *1975 Congressional Quarterly Almanac.* Washington, DC: Congressional Quarterly.

Fraas, C. J. (February 10, 1986). *P.L. 94-142, The Education for All Handicapped Children Act: Its development, implementation, and current issues.* (No. 86-552 EPW). Washington, D. C.: Congressional Research Service, The Library of Congress.

Humphrey, H. (May 20, 1974). Education Amendments of 1974. *Congressional Record,* vol. 120, p. 15273.

Joint Explanatory Statement of the Committee of Conference. In U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped. (1976). *Education of the Handicapped Act as amended through December 31, 1975.* (Report No. 72-611). Washington, DC: U.S. Government Printing Office, p. 101.

LRP Publications. (n.d.). *Individuals with Disabilities Education Act (IDEA): As amended by P. L. 102-119, The Individuals with Disabilities Education Act of 1991, signed October 6, 1991.*

Mathias, C. (May 20, 1974). Education Amendments of 1974. *Congressional Record,* vol. 120, p. 15269.

Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972)

Mosher, E. K., Hastings, A. H., and Wagoner, J. L. (Summer 1979). *Pursuing equal educational opportunity: School politics and the new activists.* N.Y.: ERIC Clearinghouse on Urban Education, Teachers College, Columbia University.

Parrish, T. and Verstegen, D.A. (1994). *Fiscal provisions of the Individuals with Disabilities Education Act: Policy issues and alternatives.* Palo Alto, CA: Center for Special Education Finance.

Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972).

Schenet, M. A. (January 27, 1989). *Education of the Handicapped Act Discretionary Programs: Background and current issues.* (No. 89-67 EPW). Washington, DC: Congressional Research Service, The Library of Congress.

U.S. Congress. House of Representatives, Committee on Education and Labor. (1969). *Elementary and Secondary Amendments of 1969.* Report to accompany H. R. 514. Report No. 91-114, 91st Cong., 1st Session. Washington, D.C.: U.S. Government Printing Office.

U.S. Congress. House of Representatives, Committee on Education and Labor. (June 26, 1975). *Education for All Handicapped Children Act of 1975.* 94th Congress, 1st Session. House Report No. 94-332. (pp. 125-190). In U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped. (1976). *Education of the Handicapped Act as amended through December 31, 1975.* (Report No. 72-611). Washington, DC: U.S. Government Printing Office.

U.S. Congress. Senate, Committee on Labor and Public Welfare. (1965). *Elementary and Secondary Education Act of 1965.* Report to accompany H. R. 2362. Report No. 146, 89th Cong., 1st Session. Washington, D.C.: U.S. Government Printing Office.

U.S. Congress. Senate, Committee on Labor and Public Welfare. (June 2, 1975). *Education for All Handicapped Children Act of 1975.* 94th Congress, 1st Session. Senate Report No. 94-168. (pp. 191-274). In U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped. (1976). *Education of the Handicapped Act as amended through December 31, 1975.* (Report No. 72-611). Washington, DC: U.S. Government Printing Office, pp. 204-205.

U.S. Congress. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped. (1976). *Education of the Handicapped Act as amended through December 31, 1975.* Report No. 72-611. Washington, DC: U.S. Government Printing Office.

U.S. Department of Education, Office of Special Education and Rehabilitative Services. (June 1992). *Summary of existing legislation affecting people with disabilities.* (ED/OSERS 92-8), Washington, DC: U.S. Government Printing Office.

U.S. Department of Education. (FY 1995). *The Fiscal Year 1995 Budget: Summary and background information.* Washington, D.C.: Author.

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